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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,876	10/03/2007	Jens Muchlsteff	NL031372	8349

24737 7590 11/25/2009
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

SYED, ATIA K

ART UNIT	PAPER NUMBER
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3769

MAIL DATE	DELIVERY MODE
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11/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/595,876	Applicant(s) MUEHLSTEFF ET AL.	
	Examiner ATIA SYED	Art Unit 3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges the response filed on July 13, 2009.

Response to Arguments

Applicant's arguments filed on July 13, 2009 have been fully considered but they are not persuasive.

Applicant argues two points: i) Paragraph 31 and 32 of the specification refer to the “control means” and the “logic unit” as “the electronics of the monitoring device”, therefore electronics are tangible structures; and ii) the cited reference does not teach that “the contact pressure is modified when the signal falls below a predetermined threshold” as recited in amended claim 1. Examiner agrees with Applicant's first argument and disagrees with the second argument.

Examiner has withdrawn 35 U.S.C. 112 rejection in response to Applicant's first argument.

As per applicant's second argument, Examiner disagrees that Tucker does not disclose that the control means controls the contact pressure when the signal falls below a predetermined threshold. Applicant has submitted, "Tucker explicitly discloses that "[if] the signals indicate that the patient is about to cough or sneeze, then the control electronics circuit 18 generates an actuation signal on its output to quickly tighten belt 10 to increase the abdominal restraint on patient 36." (See Tucker, column 3, line 45-56). So, Tucker discloses that the belt (10) is tightened when a cough or sneeze is detected and not when the signal from the sensor "*falls below a predetermined threshold*" as recited in [[amended]] claim 1". Examiner respectfully

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disagrees with Applicant's point of view. It is Examiner's position that if the signal indicates that the patient is about to cough or sneeze than it inherently means that the signal is not in a normal range wherein the normal range is defined as the signals when the patient is not about to cough or sneeze. In other words control electronics circuit 18 must have predetermined upper and lower limits i.e. a range, in order to be able to differentiate between normal signals and signals indicative of the onset of a cough or sneeze.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucker US Patent Number 4,413,620.

1. A device (1) arranged for monitoring a physiological parameter of an individual (2), said device comprising:

a sensor (8) arranged to measure a signal (S1) related to said parameter when said sensor is brought into contact with the individual's skin (50) (*fig 1, sensor 12 measures onset of cough; column 2, lines 48-56*);

an adjustable carrier (6) arranged to support said sensor and to resiliently conform to a body part of the individual so that a contact pressure is applied to the sensor (8) (*fig 1, belt 10 is adjustable; in case of an inflatable belt, air/fluid for the reservoir causes the belt to tighten,*

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column 2, lines 57-67 and column 3, lines 1-14; in case of non-inflatable belt, the mechanical linkage 28 tightens the belt, column 3, lines 28-32);

an actuator (10) arranged to interact with the adjustable carrier (6) in order to modify the contact pressure (*mechanical linkage column 2, lines 57-67 or fig 1, mechanical switch 28, column 3, lines 28-32);*

control means (12) arranged to control the contact pressure in dependence on a control signal applied to the actuator (10) (*a control signal is generated from electronics circuit 18 to actuate the valve 24 or mechanical switch 28 to tighten the belt, column 3, lines 45-56); and*

wherein the contact pressure is modified when the signal falls below a predetermined threshold (*the control electronics circuit detects the onset of a cough or sneeze based on the signals from sensors 12 therefore the signals must fall below a normal range wherein the normal range is defined as the signals when the patient is not about to cough or sneeze. In other words if the control electronics circuit is able to differentiate between normal condition and onset of cough/sneeze than it inherently follows a logic i.e. the signals have to be below a predetermined range to indicate cough/sneeze; column 3, lines 45 - column 4, line 2).*

See previous office action for rejections on claims 2-8.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ATIA SYED whose telephone number is (571)270-7134. The examiner can normally be reached on Monday through Friday, 9:00-5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/ATIA SYED/

Examiner, Art Unit 3769

/Henry M. Johnson, III/

Supervisory Patent Examiner, Art Unit 3769

November 21, 2009